

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> James A. Samsel and Amy L. Samsel, and Jerry Bowser and Delilah Bowser		<b>DEFENDANTS</b> Western Express, Inc., Guffie Swink, IV, Watsontown Trucking Company, James A. Benge and Enver Becirevic	
(b) County of Residence of First Listed Plaintiff <u>Clearfield</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>Davidson County, TN</u> (IN U.S. PLAINTIFF CASES ONLY)	
		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
(c) Attorney's (Firm Name, Address, and Telephone Number) Jonathan Ostroff, Esq.; Ostroff Injury Law; 527 Plymouth Road, Plymouth Meeting, PA 19462		Attorneys (If Known) Avrum Levicoff, Esq.; Levicoff, Silko & Deemer, P.C.; 650 Smithfield Street - Suite 1900, Pittsburgh, PA 15222	
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input checked="" type="checkbox"/> X 1	PTF <input type="checkbox"/> DEF <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6	

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

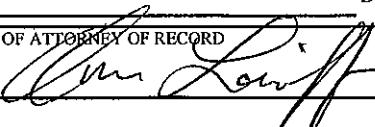
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habens Corpus:</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

<b>V. ORIGIN</b> (Place an "X" in One Box Only)	<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <b>28 U.S.C. §§ 1332 and 1441</b>						
	Brief description of cause: <b>Claim for damages arising out of a multi-vehicle motor vehicle accident</b>						

<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____	CHECK YES only if demanded in complaint: <b>JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</b>			
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions):	JUDGE	DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD		
8/31/11			
FOR OFFICE USE ONLY			

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES A. SAMSEL and AMY L. )  
SAMSEL, husband and wife, and )  
JERRY BOWSER and DELILAH )  
BOWSER, husband and wife, )  
 )  
Plaintiffs, ) CIVIL ACTION NO.  
 )  
vs. )  
 )  
WESTERN EXPRESS, INC., GUFFIE )  
SWINK, IV, WATSONTOWN )  
TRUCKING COMPANY, JAMES A. )  
BENGE and ENVER BECIREVIC, )  
 )  
Defendants. )

**NOTICE OF REMOVAL**

AND NOW, comes the defendants, Western Express, Inc. ("W.E.") and Guffie Swink, IV ("Swink"), by and through their undersigned counsel and pursuant to 28 U.S.C. §1441, and removes the above-captioned case from the Court of Common Pleas of Philadelphia County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania, on the following grounds:

1. On May 11, 2011, plaintiffs' instituted this cause of action by filing a Complaint seeking to recover damages relating to a chain-reaction multi-vehicle motor vehicle accident which fully and exclusively transpired in Clearfield County, Pennsylvania. W.E. and Swink filed Preliminary Objections on June 10, 2011. Thereafter, plaintiffs filed an Amended Complaint on June 28, 2011 and a Second Amended Complaint on July 12, 2011. A true and correct copy of the Second Amended Complaint is attached hereto as Exhibit "A". W.E. and Swink filed Preliminary Objections thereto on July 12, 2011.

2. By Stipulation which was filed on August 22, 2011, all causes of action and claims by plaintiffs, James A. Samsel and Amy L. Samsel against defendants, James A. Benge and Watsontown Trucking Company were stricken and dismissed with prejudice. A true and correct copy of the Stipulation is attached hereto as Exhibit "B".

3. The Amended Complaint sets forth separate and independent claims by the plaintiffs against the defendants. At this time, the prerequisites to this Court's original jurisdiction on grounds of diversity of citizenship and amount in controversy under 28 U.S.C. §1332 are met as to the claims by James A. Samsel and Amy L. Samsel against W.E., Swink and Envir Becirivic ("Becirivic").

4. In the Complaint, plaintiffs, James A. Samsel and Amy L. Samsel allege that they are citizens of Pennsylvania, and that the defendants, W.E., Swink, and Becirevic are citizens of Tennessee, Alabama, and Georgia, respectively.

5. The plaintiffs also allege that the amount in controversy is in excess of the jurisdictional limits of Philadelphia County requiring compulsory arbitration. Pursuant to the Philadelphia County Local Rules of Court the compulsory arbitration jurisdictional limit is \$50,000.00 or less. Phila.Civ.R. 1301. However, based upon information and belief, the amount in controversy is in excess of \$75,000.00.

6. Accordingly, the prerequisites to this Court's original jurisdiction on grounds of diversity of citizenship under 28 U.S.C. §1332 are met, and this case is therefore properly removed to this Court based upon 28 U.S.C. §1441.

WHEREFORE, defendants give notice of the removal of this action from the Court of Common Pleas of Philadelphia County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

LEVICOFF, SILKO & DEEMER, P.C.

By \_\_\_\_\_

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Samsel and Amy L. Samsel

JERRY BOWSER and DELILIAH BOWSER,  
Husband and Wife; JAMES A. SAMSEL and  
AMY L. SAMSEL, Husband and Wife,

IN THE COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PA

Plaintiffs

v.

WESTERN EXPRESS, INC.; GUFFIE SWINK, IV;  
WATSONTOWN TRUCKING COMPANY;  
JAMES A. BENGE; and ENVER BECIREVIC,  
Defendants

May Term, 2011

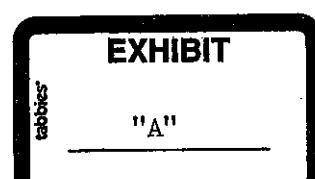
NO. 001293

JURY TRIAL DEMANDED

**PLAINTIFFS' SECOND AMENDED COMPLAINT**

AND NOW, come Plaintiffs Jerry Bowser and Delilah Bowser, by and through their attorneys, Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C.; and Plaintiffs James A. Samsel and Amy L. Samsel, by and through their attorneys, Ostroff Injury Law, and hereby aver as follows in their Amended Complaint:

1. Plaintiffs Jerry and Delilah Bowser are adult individuals and citizens of the State of Michigan, residing at 314 South Street, Mesick, MI 49668.



2. Plaintiffs James A. Samsel, and Amy L. Samsel are adult individuals and citizens of the Commonwealth of Pennsylvania, residing at 8146 Gillingham Rd., Frenchville, PA 16836.

3. Defendant Western Express, Inc., (d/b/a Western Express), upon information and belief, is a trucking and hauling company with its principal place of business located at 7135 Centennial Place, Nashville, TN 37209. At all times relevant, Defendant Western Express, Inc. was the owner of a 2007 Freightliner semi-truck, bearing Tennessee license plate # 460200HZ and VIN # 1FUJA6CK27DY80888.

4. At all time relevant hereto, Defendant Western Express, Inc. regularly transacted business operations within the Commonwealth of Pennsylvania and Philadelphia County, namely, distributing, transporting, shipping, carrying, moving goods and/or commodities into the stream of commerce within the Commonwealth and the County.

5. Defendant, Guffie Swink ("Swink"), upon information and belief, is an adult individual residing at 1908 Friendship Road, Apt. B1, Oxford, AL 36203-3843. At all times relevant hereto, Defendant Swink was an employee-driver for Defendant Western Express, Inc. acting with the course and scope of his employment and furthering his employer's business interests.

6. Defendant Watsontown Trucking Company, upon information and belief, is a trucking and hauling company with its principal place of business located at 60 Belford Blvd, Milton, PA 17847. At all times relevant, Defendant Watsontown Trucking Company was the owner of a 2009 Volvo tractor-trailer, bearing Pennsylvania license plate # AE29622 and VIN # 4V4NC9THX9N265161.

7. Defendant James A. Benge, upon information and belief, is an adult individual residing at 1215 Cedarwood Dr., Mineral Ridge, OH 44440. At all times relevant hereto, Defendant

Benge was an employee-driver for Defendant Watsontown Trucking Company acting with the course and scope of his employment and furthering his employer's business interests.

8. Defendant Watsontown Trucking Company is a large trucking company with over 225 trucks and 600 trailers and advertises that it operates in 48 states.

9. At all time relevant hereto, Defendant Watsontown Trucking Company regularly transacted business operations within the Commonwealth of Pennsylvania and Philadelphia County, namely, distributing, transporting, shipping, carrying, moving goods and/or commodities into the stream of commerce within the Commonwealth and the County.

10. Defendant Enver Becirevic, upon information and belief, is an adult individual residing at 242 Bainbridge Circle, Dallas, GA 30132.

11. On or about February 10, 2010, Defendant Swink was expressly or impliedly permissively driving Defendant Western Express, Inc.'s 2007 Freightliner tractor-trailer truck, bearing Tennessee license plate # 460200HZ and VIN # 1FUJA6CK27DY80888.

12. Upon information and belief, at the time in question, Defendant Swink was hauling a load of approximately 8,000 pounds of materials destined for delivery to Home Depot in Connecticut pursuant to the company's agreement with Defendant Western Express, Inc. The load was scheduled to be delivered to Home Depot in Connecticut at 8AM on February 10, 2010.

13. At all times relevant hereto, the 2007 Freightliner tractor-trailer, bearing Tennessee license plate # 460200HZ and VIN # 1FUJA6CK27DY80888 and owned by Defendant Western Express, Inc., was approximately 25,000 miles past due for service.

14. Upon information and belief, at all times relevant hereto on Interstate-80, visibility was poor and the roadway was covered with snow as a result of blizzard-like conditions in the area in which Plaintiffs and Defendant Swink were traveling.

15. Upon information and belief, at approximately 5:30AM on February 10, 2010, Defendant Swink advised the night dispatcher at Western Express, Inc. that the roadways on which he was driving were snow-covered and not safe.

16. Upon information and belief, during the aforementioned conversation with the night dispatcher, Defendant Swink advised that Western Express, Inc. might want to reschedule the load in his trailer rather than have Mr. Swink continue operating his tractor-trailer on unsafe roadways and in an unsafe manner in order to reach his destination at the appropriate delivery time.

17. Upon information and belief, the night dispatcher instructed to wait until the day dispatcher arrived before an appointment would be changed. Defendant Swink was never contacted by the Defendant Western Express' day dispatcher nor did the night dispatcher alter his appointment.

18. At approximately 9:30AM on February 10, 2010, Defendant Swink was traveling East on Interstate-80 in Lawrence Township, Clearfield County, Pennsylvania. He was already late for his scheduled delivery time at Home Depot in Connecticut.

19. At the same time on or about February 10, 2010, Plaintiff Jerry Bowser was operating a 2001 Volvo tractor-trailer truck owned by his employer J.L. Smith Trucking Co., Inc., East on Interstate-80 in Lawrence Township, Clearfield County, Pennsylvania, at some unknown distance behind the tractor-trailer operated by Defendant Swink and owned by Defendant Western Express, Inc. The tractor being driven by Bowser was pulling a refrigerated trailer known as a "reefer."

20. At the same time on or about February 10, 2010, Plaintiff James Samsel was operating a 2007 Freightliner tractor-trailer truck owned by Ryder Truck Rental, Inc., East on Interstate-80 in Lawrence Township, Clearfield County, Pennsylvania, at some unknown distance behind the tractor-trailer operated by Defendant Swink and owned by Defendant Western Express, Inc.

21. Upon information and belief, at the aforesaid time and place, Defendant Swink negligently and recklessly lost control of the tractor-trailer owned by Defendant Western Express, Inc. causing the truck to jackknife across Interstate-80 and block both eastbound lanes of traffic.

22. Upon information and belief, on the date and time in question, Defendant Swink was operating said tractor-trailer at an excessive rate of speed given the weather conditions Interstate-80 in an attempt to reach his destination in a timely manner.

23. As a result of negligently and recklessly losing control of his tractor-trailer, Defendant Swink caused a chain reaction of collisions eventually involving 17 total vehicles and resulting in multiple injuries.

24. Plaintiff Bowser, in an attempt to avoid the collisions blocking the roadway, conducted a lane change from the right lane to the left lane of Interstate-80. However, because both lanes were blocked, Plaintiff Bowser's tractor-trailer, plaintiff had nowhere to go so he maneuvered his vehicle as best he could between the stopped and jackknifed vehicles, resulting in some impact and some minor damage but no injuries.

25. At the same time, Defendant Benge was driving a 2009 Volvo truck tractor owned by Defendant Watsontown Trucking Company, pulling a van or enclosed box trailer also owned by Defendant Watsontown. In a statement to the police, Defendant Benge said "I was about 1 ½ truck lengths behind the reefer. There was nothing I could do and no place that I could go. I tried to stop but I couldn't. I hit the reefer and the other trucks hit me from behind." Defendant Benge stated his speed was 40-45 miles per hour at the time. Plaintiffs Jerry and Delilah Bowser believe and therefore aver that Defendant Benge struck the vehicle occupied by Jerry Bowser.

26. At the same time, Defendant Becirevic was operating a 2002 Freightliner Columbia tractor pulling a van or enclosed box trailer owned by Salim Bajric. In a statement to the police,

Defendant Becirevic said "I was in the right lane and the truck ahead of me saw the accident. I think he hit another truck. I tried to stop and no can stop. I hit the truck in front of me or another truck. I don't know I'm not sure. I saw the trailer in front of me. I think maybe me and the other truck hit the same trailer I'm not sure." Defendant Becirevic stated he was going 45 miles per hour at the time. Plaintiffs Jerry and Delilah Bowser believe and therefore aver that Defendant Becirevic stuck the vehicle occupied by Jerry Bowser.

27. Plaintiff James Samsel, in an attempt to avoid the collisions blocking the roadway, which were the direct result of the negligent and careless actions of Defendants, Swink, Benge, and Becirevic, left his lane of travel and entered the right side highway shoulder, striking the right side guardrail located on Interstate-80 and ultimately traveling down the right side embankment on the side of Interstate-80. Plaintiff Samsel's tractor-trailer did not strike or come in contact with any other motor vehicles on the roadway.

28. As a result of the aforementioned collisions, Plaintiff Jerry Bowser was caused to suffer serious, severe, and permanently disabling injuries including, but not limited to a complete traumatic disruption of the pelvic circle with multiple fractures requiring surgical intervention in the form of open reduction internal fixation; laceration to the dorsum of the right index finger; a large complex laceration to his lower left leg; tendon tears in his right shoulder, bicep, and index finger; and an abdominal chest wall contusion.

29. As a result of the aforementioned collisions, Plaintiff James Samsel was caused to suffer serious, severe, and permanently disabling injuries including, but not limited to a concussion, vertigo, head trauma, cuts on top of head requiring sutures, bruised ribs, dizziness, passing out, and bulging discs in his neck, as well as additional injuries to his head, neck, back and limbs.

30. As a direct and proximate result of the negligence and recklessness of Defendants, Plaintiff Jerry Bowser was trapped in the cab of his tractor-trailer pinned down by the dashboard and steering wheel and unable to exit under his own power. He was subsequently extricated from vehicle and taken to Clearfield Hospital on an emergent basis.

31. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff Jerry Bowser incurred medical expenses for the care and treatment of his injuries.

32. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff, James Samsel incurred medical expenses for the care and treatment of his injuries.

33. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff Jerry Bowser has suffered a loss of earnings and earning capacity as a result of the serious injuries he sustained.

34. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff, James Samsel has suffered a loss of earnings and earning capacity as a result of the serious injuries he sustained.

35. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff Jerry Bowser has suffered loss of life's pleasures.

36. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff, James Samsel has suffered loss of life's pleasures.

37. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff Jerry Bowser has undergone in the past and in the future will continue to undergo great pain and suffering.

38. As a direct and proximate result of the negligence and recklessness of Defendants aforesaid, Plaintiff, James Samsel has undergone in the past and in the future will continue to undergo great pain and suffering.

39. The above-described accident resulted solely from the negligence, carelessness and recklessness of the Defendants herein and was due in no manner whatsoever to any act or failure to act on the part of Plaintiffs Jerry Bowser or James Samsel.

**COUNT I**  
**PLAINTIFF JAMES SAMSEL v. DEFENDANT GUFFIE SWINK**  
**NEGLIGENCE**

40. Plaintiffs incorporate herein by reference, the allegations contained in paragraphs 1 through 39 of the Complaint as if the same were fully set forth herein at length.

41. The negligence, carelessness, and recklessness of the Defendant Swink consisted of the following:

- a. operating his motor vehicle at a high, dangerous, and excessive rate of speed under the circumstances;
- b. failure to operate his vehicle with due regard for the rights and safety of others on the highway;
- c. failure to exercise due care and caution under the circumstances;
- d. failure to keep his vehicle under proper control;
- e. failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- f. failure to operate his vehicle at a safe speed;
- g. failure to abide by the laws of the Commonwealth of Pennsylvania and applicable provisions of the Federal Motor Carrier Safety Regulations because

he recognized that the roads were too hazardous to continue operation yet he continued to operate his vehicle;

- h. operating his motor vehicle without due regard to the rights, safety, and position of Plaintiffs and other drivers on the roadway;
- i. illegally or improperly operating his vehicle while performing duties for purposes of his employment;
- j. failure to keep his motor vehicle under proper and adequate control at all times;
- l. operating a tractor-trailer without proper training for winter driving;
- m. improperly applying his brakes under the then present road and weather conditions
- n. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case;

42. As a direct and proximate result of the collisions and Defendant Swink's negligence, carelessness, and recklessness, Plaintiff James Samsel sustained, inter alia, the severe and disabling injuries outlined above which are averred to be permanent.

43. All paragraphs of the Plaintiffs' Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

44. The injuries sustained by Plaintiff James Samsel were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Swink in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and

costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT II**  
**PLAINTIFF JERRY BOWSER v. DEFENDANT GUFFIE SWINK**  
**NEGLIGENCE**

45. Plaintiffs incorporate herein by reference, the allegations contained in paragraphs 1 through 44 of the Complaint as if the same were fully set forth herein at length.

46. The negligence, carelessness, and recklessness of the Defendant Swink consisted of the following:

- a. operating his motor vehicle at a high, dangerous, and excessive rate of speed under the circumstances;
- b. failure to operate his vehicle with due regard for the rights and safety of others on the highway;
- c. failure to exercise due care and caution under the circumstances;
- d. failure to keep his vehicle under proper control;
- e. failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- f. failure to operate his vehicle at a safe speed;
- g. failure to abide by the laws of the Commonwealth of Pennsylvania and applicable provisions of the Federal Motor Carrier Safety Regulations because he recognized that the roads were too hazardous to continue operation yet he continued to operate his vehicle;
- h. operating his motor vehicle without due regard to the rights, safety, and position of Plaintiffs and other drivers on the roadway;

- i. illegally or improperly operating his vehicle while performing duties for purposes of his employment;
- j. failure to keep his motor vehicle under proper and adequate control at all times;
- l. operating a tractor-trailer without proper training for winter driving;
- m. improperly applying his brakes under the then present road and weather conditions
- n. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case;

47. As a direct and proximate result of the collisions and Defendant Swink's negligence, carelessness, and recklessness, Plaintiff Jerry Bowser sustained, inter alia, the severe and disabling injuries outlined above which are averred to be permanent.

48. All paragraphs of Plaintiffs' Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

49. The injuries sustained by Plaintiff Jerry Bowser were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Swink in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT III**  
**PLAINTIFF JAMES SAMSEL v. DEFENDANT WESTERN EXPRESS, INC.**  
**VICARIOUS LIABILITY AND NEGLIGENCE**

50. Paragraphs 1 through 49 of the Complaint are incorporated herein by reference and made a part thereof as if set forth in full.

51. At the time of the subject accident, Defendant Swink was acting as a servant, agent, ostensible agent and/or employee of Defendant Western Express, Inc.

52. Defendant Western Express, Inc. is responsible for and vicariously liable for the consequences of the actions and inactions of its employee, servant, agent and/or ostensible agent, Defendant Swink.

53. All paragraphs of the Plaintiffs' Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

54. The injuries sustained by Plaintiff James Samsel were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Western Express, Inc. in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT IV**  
**PLAINTIFF JERRY BOWSER v. DEFENDANT WESTERN EXPRESS, INC.**  
**VICARIOUS LIABILITY AND NEGLIGENCE**

55. Paragraphs 1 through 54 of the Complaint are incorporated herein by reference and made a part thereof as if set forth in full.

56. At the time of the subject accident, Defendant Swink was acting as a servant, agent, ostensible agent and/or employee of Defendant Western Express, Inc.

57. Defendant Western Express, Inc. is responsible for and vicariously liable for the consequences of the actions and inactions of its employee, servant, agent and/or ostensible agent, Defendant Swink.

58. All paragraphs of the Plaintiffs' Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

59. The injuries sustained by Plaintiff Jerry Bowser were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Western Express, Inc. in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT V**  
**PLAINTIFF JAMES SAMSEL v. DEFENDANT WESTERN EXPRESS, INC.**  
**CORPORATE NEGLIGENCE**

60. Paragraphs 1 through 59 above are incorporated herein by reference and made a part hereof.

61. Defendant Western Express, Inc. negligence, carelessness, recklessness, wanton and grossly negligent conduct consisted, *inter alia*, of:

- a. negligently entrusting a motor vehicle to an individual Defendants knew or should have known to have the propensities for failure operate a vehicle in adverse weather conditions;

- b. negligently entrusting a motor vehicle to an individual Defendant knew or should have known to have the propensities for the operation of the vehicle at an excessive rate of speed under the circumstances;
- c. permitting a motor vehicle onto the highways and roadways when Defendant knew or should have known that the vehicle was unsafe;
- d. failing to properly train and supervise agents, ostensible agents, servants, borrowed servants, workmen and /or employees, including but not limited to Defendant Swink;
- e. failure to discontinue Defendant Swink's route despite the adverse weather conditions;
- f. encouraging Defendant Swink to continue operating the tractor-trailer and complete his delivery in the bad weather conditions thus putting people at risk;
- g. failure to comply with the standards promulgated by the Federal Motor Carrier Safety Administration; and
- h. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case.

62. The injuries sustained by Plaintiff were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Western Express, Inc., in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

**COUNT VI**  
**PLAINTIFF JERRY BOWSER v. DEFENDANT WESTERN EXPRESS, INC.**  
**CORPORATE NEGLIGENCE**

63. Paragraphs 1 through 62 above are incorporated herein by reference and made a part hereof.

64. Defendant Western Express, Inc. negligence, carelessness, recklessness, wanton and grossly negligent conduct consisted, *inter alia*, of:

- a. negligently entrusting a motor vehicle to an individual Defendants knew or should have known to have the propensities for failure operate a vehicle in adverse weather conditions;
- b. negligently entrusting a motor vehicle to an individual Defendant knew or should have known to have the propensities for the operation of the vehicle at an excessive rate of speed under the circumstances;
- c. permitting a motor vehicle onto the highways and roadways when Defendant knew or should have known that the vehicle was unsafe;
- d. failing to properly train and supervise agents, ostensible agents, servants, borrowed servants, workmen and /or employees, including but not limited to Defendant Swink;
- e. failure to discontinue Defendant Swink's route despite the adverse weather conditions;
- f. encouraging Defendant Swink to continue operating the tractor-trailer and complete his delivery in the bad weather conditions thus putting people at risk;
- g. failure to comply with the standards promulgated by the Federal Motor Carrier Safety Administration; and
- h. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case.

65. The injuries sustained by Plaintiff were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Western Express, Inc., in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

**COUNT VII**  
**PLAINTIFF JAMES SAMSEL v. DEFENDANT JAMES A. BENGE**  
**NEGLIGENCE**

66. Plaintiffs incorporate herein by reference, the allegations contained in paragraphs 1 through 65 of the Complaint as if the same were fully set forth herein at length.

67. The negligence, carelessness, and recklessness of the Defendant Benge consisted of the following:

- a. operating his motor vehicle at a high, dangerous, and excessive rate of speed under the circumstances;
- b. failure to operate his vehicle with due regard for the rights and safety of the Plaintiffs;
- c. failure to exercise due care and caution under the circumstances;
- d. failure to keep his vehicle under proper control;
- e. failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- f. failure to operate his vehicle at a safe speed;
- g. failure to abide by the laws of the Commonwealth of Pennsylvania and applicable provisions of the Federal Motor Carrier Safety Regulations;
- h. operating his motor vehicle without due regard to the rights, safety, and position of Plaintiff and other drivers on the roadway;
- i. illegally or improperly operating his vehicle while performing duties for purposes of his employment;
- j. failure to keep his motor vehicle under proper and adequate control at all times;

- k. Failure to stop within the assured clear distance ahead;
- l. Failure to keep a sufficient following distance;
- m. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case;

68. As a direct and proximate result of the collisions and Defendant Benge's negligence, carelessness, and recklessness, Plaintiff James Samsel sustained, inter alia, the severe and disabling injuries outlined above which are averred to be permanent.

69. All paragraphs of the Plaintiffs' Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

70. The injuries sustained by Plaintiff were a direct and proximate result of the aforesaid negligence of the Defendant and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Benge in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT VIII**  
**PLAINTIFF JERRY BOWSER v. DEFENDANT JAMES A. BENGE**  
**NEGLIGENCE**

71. Plaintiffs incorporate herein by reference, the allegations contained in paragraphs 1 through 70 of the Complaint as if the same were fully set forth herein at length.

72. The negligence, carelessness, and recklessness of the Defendant Benge consisted of the following:

- a. operating his motor vehicle at a high, dangerous, and excessive rate of speed under the circumstances;
- b. failure to operate his vehicle with due regard for the rights and safety of the Plaintiffs;
- c. failure to exercise due care and caution under the circumstances;
- d. failure to keep his vehicle under proper control;
- e. failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- f. failure to operate his vehicle at a safe speed;
- g. failure to abide by the laws of the Commonwealth of Pennsylvania and applicable provisions of the Federal Motor Carrier Safety Regulations;
- h. operating his motor vehicle without due regard to the rights, safety, and position of Plaintiff and other drivers on the roadway;
- i. illegally or improperly operating his vehicle while performing duties for purposes of his employment;
- j. failure to keep his motor vehicle under proper and adequate control at all times;
- k. Failure to stop within the assured clear distance ahead;
- l. Failure to keep a sufficient following distance;
- m. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case;

73. As a direct and proximate result of the collisions and Defendant Benge's negligence, carelessness, and recklessness, Plaintiff Jerry Bowser sustained, inter alia, the severe and disabling injuries outlined above which are averred to be permanent.

74. All paragraphs of Plaintiffs' Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

75. The injuries sustained by Plaintiff were a direct and proximate result of the aforesaid negligence of the Defendant and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Benge in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT IX**

**PLAINTIFF JAMES SAMSEL v. DEFENDANT WATSONTOWN TRUCKING COMPANY**  
**VICARIOUS LIABILITY AND NEGLIGENCE**

76. Paragraphs 1 through 75 of the Complaint are incorporated herein by reference and made a part thereof as if set forth in full.

77. At the time of the subject accident, Defendant Benge was acting as a servant, agent, ostensible agent and/or employee of Defendant Watsontown Trucking Company.

78. Defendant Watsontown Trucking Company is responsible for and vicariously liable for the consequences of the actions and inactions of its employee, servant, agent and/or ostensible agent, Defendant Benge.

79. All paragraphs of Plaintiff's Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

80. The injuries sustained by Plaintiff were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Watsontown Trucking Company, in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT X**

**PLAINTIFF JERRY BOWSER v. DEFENDANT WATSONTOWN TRUCKING COMPANY**  
**VICARIOUS LIABILITY AND NEGLIGENCE**

81. Paragraphs 1 through 80 of Plaintiffs' Complaint are incorporated herein by reference and made a part thereof as if set forth in full.

82. At the time of the subject accident, Defendant Benge was acting as a servant, agent, ostensible agent and/or employee of Defendant Watsontown Trucking Company.

83. Defendant Watsontown Trucking Company is responsible for and vicariously liable for the consequences of the actions and inactions of its employee, servant, agent and/or ostensible agent, Defendant Benge.

84. All paragraphs of Plaintiff's Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

85. The injuries sustained by Plaintiff were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Watsontown Trucking Company, in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

COUNT XI

**PLAINTIFF JAMES SAMSEL v. DEFENDANT ENVER BECIREVIC**  
**NEGLIGENCE**

86. Plaintiff incorporates herein by reference, the allegations contained in paragraphs 1 through 85 of the Complaint as if the same were fully set forth herein at length.

87. The negligence, carelessness, and recklessness of the Defendant Becirevic consisted of the following:

- a. operating his motor vehicle at a high, dangerous, and excessive rate of speed under the circumstances;
- b. failure to operate his vehicle with due regard for the rights and safety of the Plaintiffs;
- c. failure to exercise due care and caution under the circumstances;
- d. failure to keep his vehicle under proper control;
- e. failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- f. failure to operate his vehicle at a safe speed;
- g. failure to abide by the laws of the Commonwealth of Pennsylvania and applicable provisions of the Federal Motor Carrier Safety Regulations;
- h. operating his motor vehicle without due regard to the rights, safety, and position of Plaintiff and other drivers on the roadway;

- i. illegally or improperly operating his vehicle while performing duties for purposes of his employment;
- j. failure to keep his motor vehicle under proper and adequate control at all times;
- k. failure to stop within the assured clear distance ahead;
- l. following too closely
- m. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case;

88. As a direct and proximate result of the collisions and Defendant Becirevic's negligence, carelessness, and recklessness, Plaintiff James Samsel sustained, inter alia, the severe and disabling injuries outlined above which are averred to be permanent.

89. All paragraphs of Plaintiff's Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

90. The injuries sustained by Plaintiff James Samsel were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Becirevic in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT XII**  
**PLAINTIFF JERRY BOWSER v. DEFENDANT ENVER BECIREVIC**  
**NEGLIGENCE**

91. Plaintiff incorporates herein by reference, the allegations contained in paragraphs 1 through 93 of the Complaint as if the same were fully set forth herein at length.

92. The negligence, carelessness, and recklessness of the Defendant Becirevic consisted of the following:

- a. operating his motor vehicle at a high, dangerous, and excessive rate of speed under the circumstances;
- b. failure to operate his vehicle with due regard for the rights and safety of the Plaintiffs;
- c. failure to exercise due care and caution under the circumstances;
- d. failure to keep his vehicle under proper control;
- e. failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- f. failure to operate his vehicle at a safe speed;
- g. failure to abide by the laws of the Commonwealth of Pennsylvania and applicable provisions of the Federal Motor Carrier Safety Regulations;
- h. operating his motor vehicle without due regard to the rights, safety, and position of Plaintiff and other drivers on the roadway;
- i. illegally or improperly operating his vehicle while performing duties for purposes of his employment;
- j. failure to keep his motor vehicle under proper and adequate control at all times;

- k. failure to stop within the assured clear distance ahead;
- l. following too closely
- m. such other and further acts of negligence, carelessness and recklessness as will be developed by future discovery in this case;

93. As a direct and proximate result of the collisions and Defendant Becirevic's negligence, carelessness, and recklessness, Plaintiff Jerry Bowser sustained, inter alia, the severe and disabling injuries outlined above which are averred to be permanent.

94. All paragraphs of Plaintiff's Complaint relating to injuries and damages are incorporated herein by reference and made a part hereof as if set forth in full.

95. The injuries sustained by Plaintiff Jerry Bowser were a direct and proximate result of the aforesaid negligence of the Defendants and were not caused or contributed to by any conduct of any of the Plaintiffs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant Becirevic in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, and any other relief as the Court may deem just and equitable.

**COUNT XIII**  
**PLAINTIFF DELILAH BOWSER v. DEFENDANTS GUFFIE SWINK**  
**AND WESTERN EXPRESS, INC.**  
**LOSS OF CONSORTIUM**

96. Plaintiff, Delilah Bowser, incorporates by reference the allegations contained in paragraphs 1 through 95 inclusive as though the same were set forth herein at length.

97. At all times pertinent hereto, Plaintiff Delilah Bowser was the lawful wife of Plaintiff Jerry Bowser.

98. As a further direct and proximate result of Defendants' liability producing conduct causing serious and permanent injuries to Plaintiff Jerry Bowser, Plaintiff Delilah Bowser has been caused to suffer the loss of services, society and companionship of her husband which will continue indefinitely into the future.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant Western Express, Inc., in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

**COUNT XIV**  
**PLAINTIFF AMY SAMSEL v. DEFENDANTS GUFFIE SWINK**  
**AND WESTERN EXPRESS, INC.**  
**LOSS OF CONSORTIUM**

99. Plaintiff Amy Samsel incorporates by reference the allegations contained in paragraphs 1 through 98 inclusive as though the same were set forth herein at length.

100. At all times pertinent hereto, Plaintiff Amy Samsel was the lawful wife of Plaintiff James Samsel.

101. As a further direct and proximate result of Defendants' liability producing conduct causing serious and permanent injuries to Plaintiff, James Samsel, Plaintiff, Amy Samsel has been caused to suffer the loss of services, society and companionship of her husband which will continue indefinitely into the future.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendants Guffie Swink and Western Express, Inc., in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

COUNT XV

PLAINTIFF DELILAH BOWSER v. DEFENDANTS JAMES A. BENGE AND  
WATSONTOWN TRUCKING COMPANY.  
LOSS OF CONSORTIUM

102. Plaintiff Delilah Bowser incorporates by reference the allegations contained in paragraphs 1 through 103 inclusive as though the same were set forth herein at length.

103. At all times pertinent hereto, Plaintiff Delilah Bowser was the lawful wife of Plaintiff Jerry Bowser.

104. As a further direct and proximate result of Defendants' liability producing conduct causing serious and permanent injuries to Plaintiff Jerry Bowser, Plaintiff Delilah Bowser has been caused to suffer the loss of services, society and companionship of her husband which will continue indefinitely into the future.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant James Benge and Watsontown Trucking Company in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

COUNT XVI

PLAINTIFF AMY SAMSEL v. DEFENDANTS JAMES A. BENGE AND  
WATSONTOWN TRUCKING COMPANY.  
LOSS OF CONSORTIUM

105. Plaintiff Amy Samsel incorporates by reference the allegations contained in paragraphs 1 through 108 inclusive as though the same were set forth herein at length.

106. At all times pertinent hereto, Plaintiff Amy Samsel was the lawful wife of Plaintiff James Samsel.

107. As a further direct and proximate result of Defendants' liability producing conduct

causing serious and permanent injuries to Plaintiff James Samsel, Plaintiff Amy Samsel has been caused to suffer the loss of services, society and companionship of her husband which will continue indefinitely into the future.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant James Benge and Watsontown Trucking Company, in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

**COUNT XVII**

**PLAINTIFF DELILAH BOWSER v. DEFENDANT ENVER BECIREVIC**  
**LOSS OF CONSORTIUM**

108. Plaintiff Delilah Bowser incorporates by reference the allegations contained in paragraphs 1 through 109 inclusive as though the same were set forth herein at length.

109. At all times pertinent hereto, Plaintiff Delilah Bowser was the lawful wife of Plaintiff Jerry Bowser.

110. As a further direct and proximate result of Defendant's liability producing conduct causing serious and permanent injuries to Plaintiff Jerry Bowser, Plaintiff Delilah Bowser has been caused to suffer the loss of services, society and companionship of her husband which will continue indefinitely into the future.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant Enver Becirevic, in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

**COUNT XVIII**  
**PLAINTIFF DELILAH BOWSER v. DEFENDANT ENVER BECIREVIC**  
**LOSS OF CONSORTIUM**

111. Plaintiff Amy Samsel incorporates by reference the allegations contained in paragraphs 1 through 113 inclusive as though the same were set forth herein at length.

112. At all times pertinent hereto, Plaintiff Amy Samsel was the lawful wife of Plaintiff James Samsel.

113. As a further direct and proximate result of Defendant's liability producing conduct causing serious and permanent injuries to Plaintiff James Samsel, Plaintiff Amy Samsel has been caused to suffer the loss of services, society and companionship of her husband which will continue indefinitely into the future.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant Enver Becirevic, in an amount in excess of jurisdictional limits requiring compulsory arbitration, plus lawful interest and costs, delay damages pursuant to Pa.R.C.P. 238, punitive damages, and any other relief as the Court may deem just and equitable.

Respectfully submitted,

**ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.**

Date: July 12, 2011

By: /s/ James R. Ronca  
James R. Ronca, Esquire  
Michael C. Schafle, Esquire  
I.D. No. 25631/94298  
252 Boas Street  
Harrisburg, PA 17102  
(717) 901-3500  
Attorneys for Plaintiffs Jerry Bowser and  
Deliliah Bowser

**OSTROFF INJURY LAW**

Date: July 12, 2011

By: */s/ Jonathan Ostroff*  
Jonathan Ostroff, Esquire  
I.D. NO. 57968  
527 Plymouth Rd.  
Plymouth Meeting, PA 19462  
(610)279-7000  
Attorneys for Plaintiffs James A Samsel and Amy L. Samsel

**CERTIFICATE OF SERVICE**

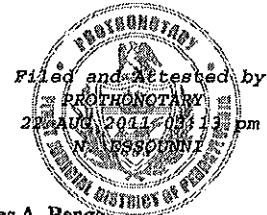
AND NOW, this 12<sup>th</sup> day of July, 2011, I, Shawn T. Peterson, hereby certify that I have caused a true and correct copy of the foregoing document to be filed electronically with the Court of Common Pleas, Philadelphia County (same is available for viewing and downloading from the ECF system by all counsel of record); and via United States Mail, postage prepaid, addressed as follows:

Enver Becirevic  
1004 Bacon St.  
Utica, NY 13501  
(unrepresented Defendant)

**ANAPOL SCHWARTZ**

By: /s/ Shawn T. Peterson  
Shawn T. Peterson, Paralegal  
252 Boas Street  
Harrisburg, PA 17102  
(717) 901-3500  
fax (717) 909-0300  
[speterson@anapolischwartz.com](mailto:speterson@anapolischwartz.com)

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PA I.D. # 43675  
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PION, JOHNSTON, NERONE GIRMAN,  
CLEMENTS & SMITH, P.C.  
1500 One Gateway Center  
Pittsburgh, PA 15222  
412-281-2288



Attorneys for Defendants James A. Benge  
and Watsontown Trucking Company

JERRY BOWSER and DELILAH BOWSER,  
Husband and Wife; JAMES A. SAMSEL and  
AMY L. SAMSEL, Husband and Wife,

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA

Plaintiffs,

TRIAL DIVISION, CIVIL

No. 1105-1293

v.

WESTERN EXPRESS, INC., GUFFIE SWINK,  
IV, WATSONTOWN TRUCKING COMPANY,  
JAMES A. BENGE and ENVER BECIREVIC,

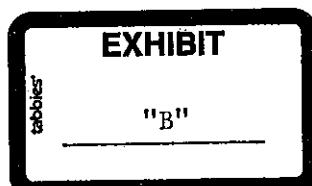
JURY TRIAL DEMANDED

Defendants.

STIPULATION

AND NOW, come the Plaintiffs and Defendants James Benge and Watsontown Trucking Company and do hereby stipulate and agree as follows:

1. All causes of actions and claims by Plaintiffs James A. Samsel and Amy L. Samsel against Defendants James A. Benge and Watsontown Trucking Company are hereby stricken and dismissed with prejudice.
2. All allegations and/or requests and/or demands for punitive damages asserted against or seeking recovery from Defendants James A. Benge and Watsontown Trucking Company are hereby stricken from the Complaint, the Amended Complaint and the Second Amended Complaint. Similarly, all allegations that Defendants James A. Benge and Watsontown Trucking Company were reckless are hereby stricken from all of Plaintiffs' Complaints.



Case ID: 110501293  
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3. The allegations set forth in Paragraph 72 (b), (c), (d), (e), (g), (h), (i), (j), (m) of the Bowser Plaintiffs' Second Amended Complaint are hereby stricken and dismissed.

4. Defendants James A. Benge and Watsontown Trucking Company hereby withdraw their Preliminary Objections to the Second Amended Complaint. Defendants James A. Benge and Watsontown Trucking Company further agree and stipulate that they will file a Praeclipe to Withdraw said Preliminary Objections.

5. Defendant Watsontown Trucking Company hereby stipulates and agrees that in 2008, 2009 and 2010 its business in Philadelphia County was in the amounts as outlined as set forth in the Affidavit of Albert J. Ouellette, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.

By: \_\_\_\_\_  
James R. Renca, Esquire  
Pa. I.D. #25631  
252 Boas Street  
Harrisburg, PA 17102  
  
Attorneys for Plaintiffs  
Jerry Bowser and Dellah Bowser

OSTROFF INJURY LAW

By: \_\_\_\_\_  
Jonathan Ostroff, Esquire  
Pa. I.D. #57968  
527 Plymouth Road  
Plymouth Meeting, PA 19462

Attorneys for Plaintiffs  
James A. Samsel and Amy L. Samsel

PION, JOHNSTON, NERONE, GIRMAN,  
CLEMENTS & SMITH, P.C.

By:   
John T. Pion, Esquire  
Pa. I. D. #43675  
Michael F. Nerone, Esquire  
Pa. I.D. #62446  
1500 One Gateway Center  
Pittsburgh, PA 15222  
  
Attorneys for Defendants, Watsontown Trucking  
Company and James A. Benge

JERRY BOWSER and DELILAH BOWSER,  
Husband and Wife; JAMES A. SAMSEL and  
AMY L. SAMSEL, Husband and Wife,

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY,  
PENNSYLVANIA

Plaintiffs,

TRIAL DIVISION, CIVIL

v.

No. 1105-1293

WESTERN EXPRESS, INC., GUFFIE  
SWINK, IV, WATSONTOWN TRUCKING  
COMPANY, JAMES A. BENGE and ENVER  
BECIREVIC,

**JURY TRIAL DEMANDED**

Defendants.

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF NORTHUMBERLAND

**AFFIDAVIT**

I, Albert J. Oullette, am the Director of Safety, of Watsontown Trucking Company and based on my knowledge and information acquired from working in that capacity state as follows:

1. Watsontown Trucking Company's offices are located in Milton, Northumberland County, Pennsylvania.
2. Watsontown Trucking Company does not maintain an office or telephone in Philadelphia County, Pennsylvania.
3. Watsontown Trucking Company does not have any employees who are based in or operate out of Philadelphia County, Pennsylvania.
4. Watsontown Trucking Company does not own, rent, or lease any real estate situated within Philadelphia County, Pennsylvania.
5. Watsontown Trucking Company does not pay any taxes to any government or municipality within Philadelphia County.



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6. Watsontown Trucking does not advertise within Philadelphia County, Pennsylvania.

7. Watsontown Trucking Company operates within the contiguous 48 states.

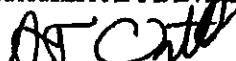
8. Watsontown Trucking Company's operations require its trucks to travel into Philadelphia County to perform pickups and deliveries on a very limited basis.

9. In 2008, 0.3% of the total pickups and deliveries made by Watsontown Trucking Company were made in Philadelphia County. That year, Watsontown Trucking Company made a total of 109,445 pickups and deliveries in the United States. Of this total, Watsontown Trucking Company only made 334 pickups/deliveries in Philadelphia County.

10. In 2009, 1.15% of the total pickups and deliveries made by Watsontown Trucking Company were made in Philadelphia County. That year, Watsontown Trucking Company made a total of 109,425 pickups and deliveries in the United States. Of this total, Watsontown Trucking Company only made 1,259 pickups/deliveries in Philadelphia County.

11. In 2010, 0.49% of the total pickups and deliveries made by Watsontown Trucking Company were made in Philadelphia County. That year, Watsontown Trucking Company made a total of 116,054 pickups and deliveries in the United States. Of this total, Watsontown Trucking Company made 576 pickups/deliveries in Philadelphia County.

FURTHER AFFIANT SAYETH NAUGHT,

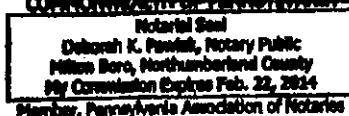
  
\_\_\_\_\_  
Albert J. Ouellette  
Director of Safety  
Watsontown Trucking Company

Sworn to and subscribed to

Before me this 29<sup>th</sup> day

Of July, 2011

Notary Public, Commonwealth of Pennsylvania



Case ID: 110501293

Control No.: 1108000293

Control No.: 11080020

**CERTIFICATE OF SERVICE**

I, John T. Pion, Esquire, hereby certify that true and correct copies of the foregoing Stipulation was served upon counsel of record and unrepresented parties via electronic filing and U.S. mail, postage prepaid, this 22<sup>nd</sup> day of August, 2011, as follows:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JERRY BOWSER and DELILAH )  
BOWSER, husband and wife, and )  
JAMES A. SAMSEL and AMY L. )  
SAMSEL, husband and wife, )  
                                  )  
Plaintiffs,                  ) CIVIL ACTION NO.  
                                  )  
vs.                            )  
                                  )  
WESTERN EXPRESS, INC., GUFFIE )  
SWINK, IV, WATSONTOWN )  
TRUCKING COMPANY, JAMES A. )  
BENGE and ENVER BECIREVIC, )  
                                  )  
Defendants.                 )

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the **Notice of Removal** has been served on all parties of record, via first class U.S. mail, postage prepaid, on August 31, 2011, addressed as follows:

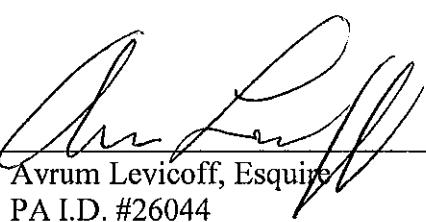
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